

RAA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 8:07-CR-70-T-27TBM

JAMES GAHAN

PLEA AGREEMENT

Pursuant to Fed. R. Crim. P. 11(c), the United States of America, by James R. Klindt, Acting United States Attorney for the Middle District of Florida, and the defendant, James Gahan, and the attorney for the defendant, Thomas Ostrander, mutually agree as follows:

A. **Particularized Terms**

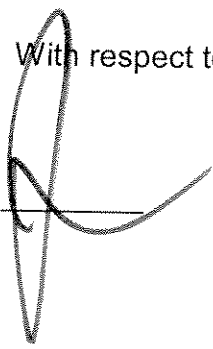
1. Count Pleading To

The defendant shall enter a plea of guilty to Count Two of the Indictment. Count Two charges the defendant with possession with intent to distribute and distribution of the anabolic steroid testosterone to a person under twenty-one years of age, in violation of 21 U.S.C. §§ 846, 841(b)(1)(D), and 859.

2. Minimum and Maximum Penalties

Count Two is punishable by a mandatory minimum term of imprisonment of one year up to ten years, a fine of \$250,000, a term of supervised release of four years, and a special assessment of \$100, said special assessment to be due on the date of sentencing. With respect to certain offenses, the Court shall order the

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AF Approval _____

defendant to make restitution to any victim of the offense, and with respect to other offenses, the Court may order the defendant to make restitution to any victim of the offense, or to the community, as set forth below.

3. Elements of the Offense

The defendant acknowledges understanding the nature and elements of the offense with which defendant has been charged and to which defendant is pleading guilty. The elements of Count Two are:

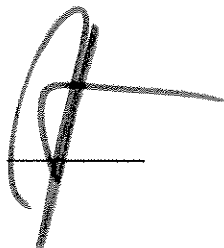
First: That the defendant knowingly and willfully possessed the anabolic steroid testosterone as charged; and

Second: That the defendant possessed the anabolic steroid testosterone with the intent to distribute it to a person under the age of 21, or the defendant did distribute the anabolic steroid testosterone to a person under the age of 21.

4. No Further Charges

If the Court accepts this plea agreement, the United States Attorney's Office for the Middle District of Florida agrees not to charge defendant with committing any other federal criminal offenses known to the United States Attorney's Office at the time of the execution of this agreement, related to the conduct giving rise to this plea agreement.

Defendant's Initials

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5. Adjusted Offense Level and Agreement as to Maximum Term of Imprisonment

Pursuant to Fed. R. Crim. P. 11(c)(1)(B), the United States agrees that the defendant's adjusted offense level be calculated at 28, as determined below:

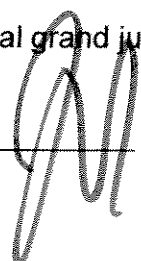
<u>Guideline</u>	<u>Description</u>	<u>Levels</u>
§ 2D1.1	Base Offense	26
§ 3C1.1	Obstruction of Justice	+2
§ 3E1.1	Acceptance of Responsibility	-3
Total Adjusted Offense Level		<u>25</u>

The parties estimate that the defendant's criminal history is a category II, and thus estimate a guideline range of 63-78 months. Accordingly, pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States agrees that the appropriate disposition of this case is a sentence in which the executed portion of any term of incarceration as to Count Two shall be 78 months of imprisonment, and that if this agreement is rejected by the Court, the defendant may withdraw his plea of guilt pursuant to Fed. R. Crim. P. 11(d)(2)(A).

6. Cooperation - Substantial Assistance to be Considered

Defendant agrees to cooperate fully with the United States in the investigation and prosecution of other persons, and to testify, subject to a prosecution for perjury or making a false statement, fully and truthfully before any federal court proceeding or federal grand jury in connection with the charges in this case and other

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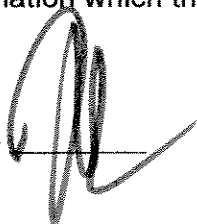


matters, such cooperation to further include a full and complete disclosure of all relevant information, including production of any and all books, papers, documents, and other objects in defendant's possession or control, and to be reasonably available for interviews which the United States may require. If the cooperation is completed prior to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion at the time of sentencing recommending (1) a downward departure from the applicable guideline range pursuant to USSG §5K1.1, or (2) the imposition of a sentence below a statutory minimum, if any, pursuant to 18 U.S.C. § 3553(e), or (3) both. If the cooperation is completed subsequent to sentencing, the government agrees to consider whether such cooperation qualifies as "substantial assistance" in accordance with the policy of the United States Attorney for the Middle District of Florida, warranting the filing of a motion for a reduction of sentence within one year of the imposition of sentence pursuant to Fed. R. Crim. P. 35(b). In any case, the defendant understands that the determination as to whether "substantial assistance" has been provided or what type of motion related thereto will be filed, if any, rests solely with the United States Attorney for the Middle District of Florida, and the defendant agrees that defendant cannot and will not challenge that determination, whether by appeal, collateral attack, or otherwise.

7. Use of Information - Section 1B1.8

Pursuant to USSG §1B1.8(a), the United States agrees that no self-incriminating information which the defendant may provide during the course of

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defendant's cooperation and pursuant to this agreement shall be used in determining the applicable sentencing guideline range, subject to the restrictions and limitations set forth in USSG §1B1.8(b).

8. Cooperation - Responsibilities of Parties

a. The government will make known to the Court and other relevant authorities the nature and extent of defendant's cooperation and any other mitigating circumstances indicative of the defendant's rehabilitative intent by assuming the fundamental civic duty of reporting crime. However, the defendant understands that the government can make no representation that the Court will impose a lesser sentence solely on account of, or in consideration of, such cooperation.

b. It is understood that should the defendant knowingly provide incomplete or untruthful testimony, statements, or information pursuant to this agreement, or should the defendant falsely implicate or incriminate any person, or should the defendant fail to voluntarily and unreservedly disclose and provide full, complete, truthful, and honest knowledge, information, and cooperation regarding any of the matters noted herein, the following conditions shall apply:

(1) The defendant may be prosecuted for any perjury or false declarations, if any, committed while testifying pursuant to this agreement, or for obstruction of justice.

(2) The United States may prosecute the defendant for the charges which are to be dismissed pursuant to this agreement, if any, and may either seek reinstatement of or refile such charges and prosecute the defendant thereon in

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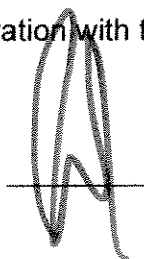


the event such charges have been dismissed pursuant to this agreement. With regard to such charges, if any, which have been dismissed, the defendant, being fully aware of the nature of all such charges now pending in the instant case, and being further aware of defendant's rights, as to all felony charges pending in such cases (those offenses punishable by imprisonment for a term of over one year), to not be held to answer to said felony charges unless on a presentment or indictment of a grand jury, and further being aware that all such felony charges in the instant case have heretofore properly been returned by the indictment of a grand jury, does hereby agree to reinstatement of such charges by rescission of any order dismissing them or, alternatively, does hereby waive, in open court, prosecution by indictment and consents that the United States may proceed by information instead of by indictment with regard to any felony charges which may be dismissed in the instant case, pursuant to this plea agreement, and the defendant further agrees to waive the statute of limitations and any speedy trial claims on such charges.

(3) The United States may prosecute the defendant for any offenses set forth herein, if any, the prosecution of which in accordance with this agreement, the United States agrees to forego, and the defendant agrees to waive the statute of limitations and any speedy trial claims as to any such offenses.

(4) The government may use against the defendant the defendant's own admissions and statements and the information and books, papers, documents, and objects that the defendant has furnished in the course of the defendant's cooperation with the government.

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(5) The defendant will not be permitted to withdraw the guilty pleas to those counts to which defendant hereby agrees to plead in the instant case but, in that event, defendant will be entitled to the sentencing limitations, if any, set forth in this plea agreement, with regard to those counts to which the defendant has pled; or in the alternative, at the option of the United States, the United States may move the Court to declare this entire plea agreement null and void.

9. Forfeiture of Assets

The defendant agrees to forfeit to the United States immediately and voluntarily any and all assets and property, or portions thereof, subject to forfeiture, pursuant to 21 U.S.C. § 853 and/or 21 U.S.C. § 881, whether in the possession or control of the United States or in the possession or control of the defendant or defendant's nominees. The assets to be forfeited specifically include, but are not limited to, the following: cash, stocks, bonds, certificates of deposit, personal property, and real estate. The defendant agrees and consents to the forfeiture of these assets pursuant to any federal criminal, civil, and/or administrative forfeiture action. The defendant also hereby agrees that the forfeiture described herein is not excessive and, in any event, the defendant waives any constitutional claims that the defendant may have that the forfeiture constitutes an excessive fine.

The defendant admits and agrees that the conduct described in the Factual Basis below provides a sufficient factual and statutory basis for the forfeiture of the property sought by the government. Pursuant to the provisions of Rule 32.2(b)(1), the United States and the defendant request that at the time of accepting this plea

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agreement, the court make a determination that the government has established the requisite nexus between the property subject to forfeiture and the offense(s) to which defendant is pleading guilty and enter a preliminary order of forfeiture. Pursuant to Rule 32.2(b)(3), the defendant agrees that the preliminary order of forfeiture shall be final as to the defendant at the time it is entered, notwithstanding the requirement that it be made a part of the sentence and be included in the judgment.

The defendant agrees to forfeit all interests in the properties described above and to take whatever steps are necessary to pass clear title to the United States. These steps include, but are not limited to, the surrender of title, the signing of a consent decree of forfeiture, and signing of any other documents necessary to effectuate such transfers.

Defendant further agrees to take all steps necessary to locate property and to pass title to the United States before the defendant's sentencing. To that end, defendant agrees to fully assist the government in the recovery and return to the United States of any assets, or portions thereof, as described above wherever located. The defendant agrees to make a full and complete disclosure of all assets over which defendant exercises control and those which are held or controlled by a nominee. The defendant further agrees to be polygraphed on the issue of assets, if it is deemed necessary by the United States.

The defendant agrees that the United States is not limited to forfeiture of the property described above. If the United States determines that property of the defendant identified for forfeiture cannot be located upon the exercise of due diligence;

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has been transferred or sold to, or deposited with, a third party; has been placed beyond the jurisdiction of the Court; has been substantially diminished in value; or has been commingled with other property which cannot be divided without difficulty; then the United States shall, at its option, be entitled to forfeiture of any other property (substitute assets) of the defendant up to the value of any property described above. This Court shall retain jurisdiction to settle any disputes arising from application of this clause. The defendant agrees that forfeiture of substitute assets as authorized herein shall not be deemed an alteration of the defendant's sentence.

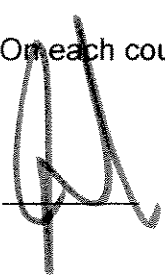
Forfeiture of the defendant's assets shall not be treated as satisfaction of any fine, restitution, cost of imprisonment, or any other penalty this Court may impose upon the defendant in addition to forfeiture.

B. Standard Terms and Conditions

1. Restitution, Special Assessment and Fine

The defendant understands and agrees that the Court, in addition to or in lieu of any other penalty, shall order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663A, for all offenses described in 18 U.S.C. § 3663A(c)(1) (limited to offenses committed on or after April 24, 1996); and the Court may order the defendant to make restitution to any victim of the offense(s), pursuant to 18 U.S.C. § 3663 (limited to offenses committed on or after November 1, 1987) or § 3579, including restitution as to all counts charged, whether or not the defendant enters a plea of guilty to such counts, and whether or not such counts are dismissed pursuant to this agreement. On each count to which a plea of guilty is entered, the Court shall

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impose a special assessment, to be payable to the Clerk's Office, United States District Court, and due on date of sentencing. The defendant understands that this agreement imposes no limitation as to fine.

2. Supervised Release

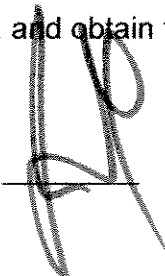
The defendant understands that the offense(s) to which the defendant is pleading provide(s) for imposition of a term of supervised release upon release from imprisonment, and that, if the defendant should violate the conditions of release, the defendant would be subject to a further term of imprisonment.

3. Sentencing Information

The United States reserves its right and obligation to report to the Court and the United States Probation Office all information concerning the background, character, and conduct of the defendant, to provide relevant factual information, including the totality of the defendant's criminal activities, if any, not limited to the count(s) to which defendant pleads, to respond to comments made by the defendant or defendant's counsel, and to correct any misstatements or inaccuracies. The United States further reserves its right to make any recommendations it deems appropriate regarding the disposition of this case, subject to any limitations set forth herein, if any.

Pursuant to 18 U.S.C. § 3664(d)(3) and Fed. R. Crim. P. 32(d)(2)(A)(ii), the defendant agrees to complete and submit, upon execution of this plea agreement, an affidavit reflecting the defendant's financial condition. The defendant further agrees, and by the execution of this plea agreement, authorizes the United States Attorney's Office to provide to, and obtain from, the United States Probation Office or any victim

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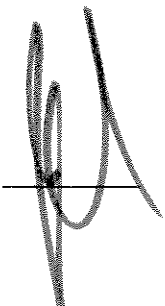


named in an order of restitution, or any other source, the financial affidavit, any of the defendant's federal, state, and local tax returns, bank records and any other financial information concerning the defendant, for the purpose of making any recommendations to the Court and for collecting any assessments, fines, restitution, or forfeiture ordered by the Court.

4. Sentencing Recommendations

It is understood by the parties that the Court is neither a party to nor bound by this agreement. The Court may accept or reject the agreement, or defer a decision until it has had an opportunity to consider the presentence report prepared by the United States Probation Office. The defendant understands and acknowledges that, although the parties are permitted to make recommendations and present arguments to the Court, the sentence will be determined solely by the Court, with the assistance of the United States Probation Office. Defendant further understands and acknowledges that any discussions between defendant or defendant's attorney and the attorney or other agents for the government regarding any recommendations by the government are not binding on the Court and that, should any recommendations be rejected, defendant will not be permitted to withdraw defendant's plea pursuant to this plea agreement. The government expressly reserves the right to support and defend any decision that the Court may make with regard to the defendant's sentence, whether or not such decision is consistent with the government's recommendations contained herein.

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5. Defendant's Waiver of Right to Appeal and
Right to Collaterally Challenge the Sentence

The defendant agrees that this Court has jurisdiction and authority to impose any sentence up to the statutory maximum and expressly waives the right to appeal defendant's sentence or to challenge it collaterally on any ground, including the ground that the Court erred in determining the applicable guidelines range pursuant to the United States Sentencing Guidelines, except (a) the ground that the sentence exceeds the defendant's applicable guidelines range as determined by the Court pursuant to the United States Sentencing Guidelines; (b) the ground that the sentence exceeds the statutory maximum penalty; or (c) the ground that the sentence violates the Eighth Amendment to the Constitution; provided, however, that if the government exercises its right to appeal the sentence imposed, as authorized by Title 18, United States Code, Section 3742(b), then the defendant is released from his waiver and may appeal the sentence as authorized by Title 18, United States Code, Section 3742(a).

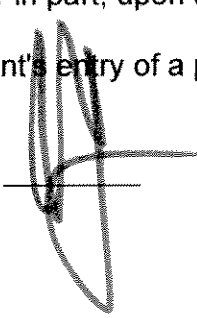
6. Middle District of Florida Agreement

It is further understood that this agreement is limited to the Office of the United States Attorney for the Middle District of Florida and cannot bind other federal, state, or local prosecuting authorities, although this office will bring defendant's cooperation, if any, to the attention of other prosecuting officers or others, if requested.

7. Filing of Agreement

This agreement shall be presented to the Court, in open court or in camera, in whole or in part, upon a showing of good cause, and filed in this cause, at the time of defendant's entry of a plea of guilty pursuant hereto.

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8. Voluntariness

The defendant acknowledges that defendant is entering into this agreement and is pleading guilty freely and voluntarily without reliance upon any discussions between the attorney for the government and the defendant and defendant's attorney and without promise of benefit of any kind (other than the concessions contained herein), and without threats, force, intimidation, or coercion of any kind. The defendant further acknowledges defendant's understanding of the nature of the offense or offenses to which defendant is pleading guilty and the elements thereof, including the penalties provided by law, and defendant's complete satisfaction with the representation and advice received from defendant's undersigned counsel (if any). The defendant also understands that defendant has the right to plead not guilty or to persist in that plea if it has already been made, and that defendant has the right to be tried by a jury with the assistance of counsel, the right to confront and cross-examine the witnesses against defendant, the right against compulsory self-incrimination, and the right to compulsory process for the attendance of witnesses to testify in defendant's defense; but, by pleading guilty, defendant waives or gives up those rights and there will be no trial. The defendant further understands that if defendant pleads guilty, the Court may ask defendant questions about the offense or offenses to which defendant pleaded, and if defendant answers those questions under oath, on the record, and in the presence of counsel (if any), defendant's answers may later be used against defendant in a prosecution for perjury or false statement. The defendant also understands that defendant will be adjudicated guilty of the offenses to which defendant

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has pleaded and, if any of such offenses are felonies, may thereby be deprived of certain rights, such as the right to vote, to hold public office, to serve on a jury, or to have possession of firearms.

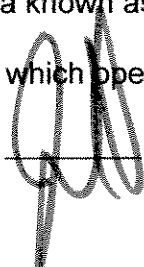
9. Factual Basis

Defendant is pleading guilty because defendant is in fact guilty. The defendant certifies that defendant does hereby admit that the facts set forth below are true, and were this case to go to trial, the United States would be able to prove those specific facts and others beyond a reasonable doubt:

FACTS

In 2002, the defendant's minor son, age 13, ("the minor") was competing as an amateur in-line roller skater in competitions organized by USA Roller Sports ("USARS") and other organizations. The minor competed in races throughout the United States, as well as in international races. In approximately, April, 2002, the defendant employed Phillip C. Pavicic ("Pavicic") to train the minor. During this time period, Pavicic, owned and operated Polo Health and Fitness Inc., doing business as, World Gym, in Ocala, Florida. The defendant discussed with Pavicic the competitive advantages of performance enhancement drugs. The defendant specifically discussed with Pavicic about starting the minor on a testosterone cycle to assist the minor in gaining a competitive advantage. Before his relationship with the defendant and the minor, Pavicic had been obtaining, amongst other substances, the anabolic steroid testosterone from John Todd Miller ("Miller"). Miller operated a "store front" business in the Tampa Bay area known as either the "Pasco Medical Center," or the "Physicians Wellness Institute," which operated with the primary purpose of illegally distributing

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steroids and other substances. Miller charged normally between \$300 and \$2,800 for a steroid cycle. In approximately, April, 2002, Pavicic traveled with the minor to meet Miller, and to discuss putting the minor on a testosterone cycle. Miller ordered a blood test on the minor. The results of the blood work showed that the minor was already taking some type of synthetic testosterone because the minor's testosterone levels were exceedingly high. Miller discussed with the defendant and Pavicic that the minor should not receive any further steroids until the levels were brought back to a normal range. Soon after, the minor's testosterone level dropped to a normal range, Miller began the minor on a steroid cycle, specifically providing the minor with Testosterone Cypionate. During the summer of 2002, Pavicic trained the minor and assisted the minor in obtaining steroids from Miller. However, in approximately August, 2002, Pavicic and the defendant severed their relationship based upon reasons not related to the training of the minor. After, Pavicic was no longer involved with the minor's training, the defendant began taking the minor to Miller to obtain steroids. Additionally, the defendant himself began receiving steroids from Miller for his own use. From approximately August, 2002, until March, 2003, the defendant received steroids for himself and for the minor by either coming to Miller's storefront in Tampa Bay and allowing Miller to inject the minor and the defendant, or by receiving the steroids through the mail with instructions on how to inject the steroids.

In approximately April, 2003, the defendant severed his relationship and the minor's relationship with Miller. Specifically, the defendant and Miller entered into a business venture together which failed and resulted in personal animosity. As a result

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of the severed relationship, the defendant reported to law enforcement that Miller was operating a storefront to illegally distribute steroids, and that Miller and Pavicic had distributed steroids to the minor without the defendant's knowledge. The defendant lied to law enforcement about his participation in the distribution of steroids to the minor. Specifically, the defendant advised law enforcement that he believed Miller to be a legitimate doctor who specialized in treating athletes, based upon the fact that almost every time that he was in Miller's storefront he observed numerous professional wrestlers, law enforcement officers, and other individuals in the storefront for treatment. The defendant stated that as soon as he found out that Miller was giving the minor steroids he reported it to law enforcement. As a result of the defendant's information, Miller and Pavicic were arrested and prosecuted for their involvement in the distribution of steroids to the minor as well as to other individuals.

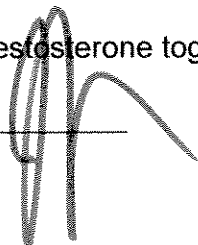
Soon after reporting Miller and Pavicic to law enforcement, and assisting in Miller and Pavicic's prosecutions, the defendant located another source for performance enhancement drugs for the minor and himself. Specifically, in approximately December, 2004, the defendant began obtaining performance enhancement drugs from a doctor located in DeLand, Florida. The defendant obtained the anabolic steroid, Testosterone Cypionate, and Somatropin, which is a human growth hormone from the DeLand doctor through prescriptions in the defendant's name. The defendant utilized Signature Pharmacy in Orlando, Florida to fulfill the prescriptions. From approximately, December, 2004 until March, 2007, the defendant was obtaining Testosterone Cypionate, Somatropin, as well as other substances based upon prescriptions filled at Signature Pharmacy.

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The defendant provided some of the Testosterone Cypionate, Somatropin, or other substances obtained by prescription from Signature Pharmacy to the minor. During one period of time the minor was living and training in North Carolina, and as such the defendant at times would fulfill the prescriptions in Orlando, Florida, and then mail the Testosterone Cypionate, Somatropin, or other substances to the minor in North Carolina. The defendant continued to provide anabolic steroids and other performance enhancement drugs to the minor until at least August, 2005, during which time period the minor was confronted by the United States Anti-Doping Agency ("USADA") for his synthetic testosterone use based upon positive tests. Specifically, the minor was competing in a USARS event to qualify for the junior national team to represent the United States in an international competition to be held in China. The minor was tested four times, and three tests came back positive for the use of synthetic testosterone. Soon after, the minor's positive tests by USADA, law enforcement interviewed the minor, who eventually and reluctantly admitted that he was using the anabolic steroid testosterone, the human growth hormone, Somatropin, as well as other substances, and that it was the defendant who was obtaining the substances and providing them to the minor. Further, the minor admitted that when he first began training with Pavicic and obtaining testosterone from Miller, the defendant was fully involved in the distribution of the steroids to the minor. Specifically, the minor stated that the defendant knew, and was involved from the very beginning when the minor first began using steroids. The minor acknowledged that after Pavicic stopped training the minor, the minor would go with the defendant to Miller's storefront so that the defendant and the minor could obtain testosterone together. The minor stated that when the defendant

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reported Miller and Pavicic to law enforcement, the minor lied about the defendant's knowledge and involvement because the minor never wanted the defendant to get into trouble.

10. Entire Agreement

This plea agreement constitutes the entire agreement between the government and the defendant with respect to the aforementioned guilty plea and no other promises, agreements, or representations exist or have been made to the defendant or defendant's attorney with regard to such guilty plea.

11. Certification

The defendant and defendant's counsel certify that this plea agreement has been read in its entirety by (or has been read to) the defendant and that defendant fully understands its terms.

DATED this 5 day of August, 2007.



JAMES GAHAN
Defendant



THOMAS OSTRANDER
Attorney for Defendant

JAMES R. KLINDT
Acting United States Attorney

By:



ANTHONY E. PORCELLI
Assistant United States Attorney



ROBERT A. MOSAKOWSKI
Assistant United States Attorney
Chief, Tampa Division